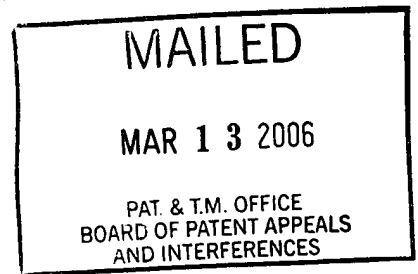


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte THOMAS J. SMITH

Application No. 10/672,488



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on February 9, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On March 2, 2005, appellant filed an Information Disclosure Statement(IDS). It is not clear from the record whether the examiner considered the statement(s) submitted or whether the examiner notified appellant of why the submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98.

Also, on November 15, 2005, the examiner has mailed an examiner's answer. A review of the file reveals that references

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were applied to the statement of rejections in the Grounds of Rejection section, paragraph (9) of the examiner's answer. Before further review, the examiner must submit a corrected examiner's answer that will include in the Evidence Relied Upon section, the list of references mentioned in the statement of rejections. Appropriate correction is required.

In addition, there is no indication that the appellant responded to the new grounds of rejection set forth in the examiner's answer within the two-month time period. Before further review, the examiner must request action from the appellant or prepare application for dismissal for non-response to the new grounds of rejection. See 37 CFR § 41.39(b).

Accordingly, it is

ORDERED that this application be returned to the examiner for: 1) consideration of the Information Disclosure Statement stated above; 2) appropriate notification by the examiner to appellant of such consideration; 3) vacate the examiner's answer mailed November 15, 2005, and issue a revised Examiner's Answer having the missing references listed under the

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Evidence Relied Upon section, paragraph (8); 4) non-response by the appellant to the new grounds of rejection; and 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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